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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

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In re M.A., a Person Coming Under the Juvenile  
Court Law.

C080608

EL DORADO COUNTY HEALTH AND HUMAN  
SERVICES,

(Super. Ct. No.  
PDP20140113)

Plaintiff and Respondent,

v.

Christina C.,

Defendant and Appellant.

Christina C. (mother) appeals the juvenile court's orders denying her Welfare and Institutions Code<sup>1</sup> section 388 petition, terminating her parental rights to her daughter, M.A., and selecting adoption as the permanent plan. Mother contends the juvenile court

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

abused its discretion in denying her section 388 petition to place M.A. with her and reinstate family reunification services. She further contends the juvenile court erred in determining that the beneficial parent-child relationship exception to adoption does not apply. (§ 366.26, subd. (c)(1)(B)(i).) Finding no error, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On June 24, 2014, police discovered mother and M.A., who was then four years old, in front of a convenience store. Mother was asleep on the ground and M.A. was crying. M.A. was hot, thirsty, and hungry. She was also disheveled and dirty, and mother had no money, water, or food to care for her. Mother had a lengthy criminal and substance abuse history, including abuse of methamphetamine and alcohol. Mother also had several prior child welfare referrals in Santa Clara County for neglecting her son.<sup>2</sup>

On June 26, 2014, mother began a 90-day inpatient residential drug treatment program at Progress House. In July 2014, a juvenile dependency petition was filed alleging that mother's use of controlled substances periodically rendered her incapable of providing appropriate care and supervision of M.A. (§ 300, subds. (b), (g).) The juvenile court sustained the petition, and the matter was transferred to El Dorado County for disposition. At the disposition hearing, mother retained custody of M.A., and family maintenance services were ordered.

After successfully completing the inpatient residential drug treatment program, mother and M.A. moved into a sober living house. In January 2015, mother was exited from the house due to fraternization with a male resident. Mother and M.A. moved into a hotel with that male, who was on parole and had a history of substance abuse, domestic violence, and gang affiliation.

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<sup>2</sup> After mother failed to reunify with her son, he was placed in a guardianship with his maternal grandmother.

In early February 2015, the El Dorado County Health and Human Services Agency (Agency) received a Suspected Child Abuse Report alleging that mother yells at M.A., hits her with an open hand, brushes her hair hard, and pinches her as a form of discipline. The report further alleged that M.A. exhibits behaviors such as flinching and being withdrawn. The Agency told mother that the male she was residing with was not to be in the presence of M.A. pending its approval. A week later, mother asked the Agency to take M.A. from her because she no longer could afford to stay at the motel. Mother told the Agency that she could not take care of M.A. and that she understood M.A. would be placed in foster care.

In mid-February 2015, the Agency filed a section 387 petition seeking removal of M.A. from mother's custody and placement of her in a foster home. The juvenile court granted the petition and ordered visitation for mother.<sup>3</sup> The juvenile court also scheduled a disposition hearing.

Prior to the hearing, the Agency filed a report concluding that it would not be in the best interest of M.A. to be placed with her mother. The report recommended that M.A. be declared a dependent child and that reunification services not be provided to mother. The report also recommended that M.A. be placed with her paternal grandparents. In support of these recommendations, the report stated: "The issues which led to the removal of the child from the mother's care have not yet been addressed and there remains substantial risk to the health and immediate safety of the child if returned to the mother at this time. The mother reports she has struggled with an addiction to drugs and alcohol throughout her adult life which has led to an unstable lifestyle. In addition to

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<sup>3</sup> In early March 2015, mother was accepted back into the drug treatment program at Progress House, even though she had been asked to leave on two prior occasions. However, less than a week later, she was removed from the program after she failed to follow the rules.

this instability, the mother has struggled to maintain housing for herself and her child.” The report noted that mother had engaged in a pattern of lying and being evasive, had refused to drug test on numerous occasions, and had been unreliable and unpredictable in visiting M.A. The report also noted that mother had discussed inappropriate topics with M.A. In an addendum report, the Agency reported that mother had tested positive for methamphetamine, lost her job, and admitted to using marijuana. The Agency also reported that mother failed to re-enter an inpatient drug and alcohol treatment program or participate in an outpatient assessment and treatment.

At the disposition hearing, the juvenile court removed M.A. from mother’s custody, denied reunification services to mother, placed M.A. with the paternal grandparents, ordered visitation for mother, and scheduled a section 366.26 permanency hearing. Prior to the hearing, the Agency filed a report recommending that mother’s parental rights be terminated, and that adoption be made the permanent plan. In support of these recommendations, the Agency reported that mother had yet to remedy her serious problems, including substance abuse, gang affiliations, dangerous relationships, and unstable housing. The Agency further reported that the potential adoptive parents (i.e., paternal grandparents) have a close attachment and healthy relationship with M.A., had met all of M.A.’s needs while she had been placed in their home, and had confirmed that they wished to provide M.A. with a permanent home through adoption.

In July 2015, mother filed a section 388 petition requesting that M.A. be returned to her custody and family reunification services be reinstated. In support of her request, mother stated that she had engaged in services on her own, including parenting classes, random drug testing, alcohol and substance abuse meetings, and individual counseling. She also claimed that she had a place to live and a job, and that she had “consistently exercised her visitation to the best of her ability.”

In September 2015, a contested modification hearing and permanency hearing were held on the same day. The juvenile court denied mother’s section 388 petition,

finding that she had chronic instability in her life including, but not limited to, housing, employment, and substance abuse. The juvenile court then found M.A. to be adoptable, terminated mother's parental rights, and selected adoption by the paternal grandparents as the permanent plan for M.A.

Mother now appeals the juvenile court's orders denying her section 388 petition, terminating her parental rights, and selecting adoption as the permanent plan for M.A.

## **DISCUSSION**

### **A. Section 388 Petition**

Mother contends the juvenile court abused its discretion in denying her request to place M.A. with her and reinstate family reunification services. We disagree.

To prevail on a section 388 petition, the parent must establish that new or changed circumstances exists and that the proposed order would promote the best interests of the child. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641-642 (*Marcelo B.*)) "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation] . . . ." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The grant or denial of a section 388 petition is committed to the sound discretion of the trial court and will not be disturbed unless an abuse of discretion is clearly established. (*Marcelo B.*, at p. 642.) "An abuse of discretion occurs when the juvenile court has exceeded the bounds of reason by making an arbitrary, capricious or patently absurd determination. [Citation.]" (*Ibid.*)

We conclude the juvenile court did not abuse its discretion in denying mother's section 388 petition. The record supports the juvenile court's determination that the circumstances leading to dependency had not changed. Mother has a long history of substance abuse and has been unable to remain sober after participating in drug treatment. While mother offered proof that she again was starting to rehabilitate, it is clear that she has not adequately addressed her substance abuse problem to support a change in

circumstances. (See *Marcelo B.*, *supra*, 209 Cal.App.4th at p. 642 [finding that father's participation in 12-step meetings, completion of a substance abuse program, and attendance at parenting classes was not prima facie evidence of a change in circumstances because father had already received extensive treatment for his alcoholism and it did not prevent him from relapsing a scant four months after reunifying with the child]; *In re Mary G.* (2007) 151 Cal.App.4th 184, 205-206 [finding a failure to show changed circumstances; noting that a three-month period of sobriety following years of drug abuse was "not particularly compelling"]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 ["It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform"].)

Furthermore, mother failed to show that reunification services would be in M.A.'s best interests. Three factors guide the juvenile court's discretion in considering a section 388 petition: (1) the seriousness of the problem that led to the dependency; (2) the relative strength of the relationships between the child and the parent and the child and the caretaker; and (3) the degree to which the underlying problem has been ameliorated. (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 531-532.) Here, the underlying problem is mother's serious long-standing alcohol and drug addiction. Mother failed to show that she could overcome her substance abuse problem such that she could provide M.A. a stable, safe, and loving home environment. The record supports the juvenile court's determination that mother has a 22-year history of chronic substance abuse, as well as chronic instability in relationships, housing, and employment. The record also supports the juvenile court's determination that M.A. had a hard time trusting her mother due to mother's poor judgment, including lying to M.A. and exposing her to an unsafe and unhealthy environment by using drugs and engaging in relationships with men she knew had a history of committing crimes and abusing drugs. By contrast, the record reflects that the paternal grandparents have a close attachment and a healthy relationship with M.A., are capable of meeting all of M.A.'s needs, and will provide M.A. with a safe and

stable home. Under these circumstances, “the [child’s] interest in stability was the court’s foremost concern, outweighing any interest mother may have in reunification.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.) “The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it.” (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038, superseded by statute on another ground as stated in *In re Eli F.* (1989) 212 Cal.App.3d 228, 234.) “A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

#### **B. Beneficial Parent-Child Relationship Exception to Adoption**

Mother contends the juvenile court erred in terminating her parental rights and selecting adoption as the permanent plan because M.A. will benefit from continuing the parent-child relationship. (§ 366.26, subd. (c)(1)(B)(i).) According to mother, substantial evidence does not support the juvenile court’s determination that the beneficial parent-child relationship exception to adoption does not apply. We disagree.

“Section 366.26 provides that if parents have failed to reunify with an adoptable child, the juvenile court must terminate their parental rights and select adoption as the permanent plan for the child. The juvenile court may choose a different permanent plan only if it ‘finds a compelling reason for determining that termination [of parental rights] would be detrimental to the child [because]: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ (§ 366.26, subd. (c)(1)(B)(i).)” (*Marcelo B.*, *supra*, 209 Cal.App.4th at p. 642.) “ ‘Adoption, where possible, is the permanent plan preferred by the Legislature.’ ” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.)

“When contesting termination of parental rights under the statutory exception that the parent has maintained regular visitation with the child and the child will benefit from continuing the relationship, the parent has the burden of showing either that (1) continuation of the parent-child relationship will promote the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents [citation] or (2) termination of the parental relationship would be detrimental to the child. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

A parent seeking to overcome the statutory preference for adoption “must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent. [Citation.]” (*In re Angel B., supra*, 97 Cal.App.4th at p. 466.)

Our standard of review is the substantial evidence test. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333.) We determine if there is substantial evidence, contradicted or uncontradicted, to support the conclusions of the juvenile court, resolving all conflicts favorably to the prevailing party, and drawing all legitimate inferences to uphold the lower court’s ruling. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) “The appellant has the burden of showing the finding or order is not supported by substantial evidence.” (*In re Christopher L.*, at pp. 1333-1334.)

We conclude that substantial evidence supports the juvenile court’s decision to terminate mother’s parental rights and select adoption as the permanent plan for M.A. No exceptional circumstances exist to preclude M.A.’s adoption. Mother did not show



that severing the parent-child relationship would deprive M.A. of a substantial, positive emotional attachment such that M.A. would be greatly harmed. The record reflects that mother continued to abuse substances after receiving drug treatment, her visits with M.A. were sporadic, and she was unpredictable and unreliable in visiting. The record also reflects that mother made M.A.'s life stressful and upsetting, and that mother was often dismissive and unfeeling towards M.A. during phone calls and when she ended visits with her. But even if mother had maintained regular loving contact with M.A., this is not enough to establish that the beneficial parent-child relationship exception applies because "it bears no resemblance to the sort of consistent, daily nurturing that marks a parental relationship." (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827 [to show the beneficial parent-child relationship exception applies, the parent must show that she occupies a " 'parental role' " in the child's life].)

Mother failed to demonstrate that she can consistently provide a safe, healthy, and stable environment for M.A. The record shows persistent instability in housing and employment as well as chronic substance abuse. By contrast, as we previously noted, the record reflects that the paternal grandparents have a close attachment and a healthy relationship with M.A., are capable of meeting all her needs, and will provide M.A. with a safe and stable home. On this record, the benefit of continuing the parent-child relationship does not "outweigh the well-being [M.A.] would gain in a permanent home with [her] adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; see *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 ["[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship."].)

## **DISPOSITION**

The orders of the juvenile court are affirmed.

/s/  
Blease, Acting P. J.

We concur:

/s/  
Hull, J.

/s/  
Murray, J.